

usual or common form or any other form which the directors may approve.

There is evidence on the record of what is the usual or common form in use in Singapore and there is also evidence that the directors have never approved any other form nor have they approved the actual transfer submitted to them in respect of the stock in question. The usual or common form in use in Singapore requires the signature of the transferor to be attested by a witness and the transfer submitted to the directors shows that the husband's signature was not so attested.

In the circumstances of this case the company was entitled to refuse to register the transfer. In my opinion, the learned judge erred in ordering rectification of the register on the ground that the transfer was in conformity with the essential requirements of article 50.

The second question to be decided is whether the wife had a good title to the stock in question. If at the date the transfer was presented for registration there was a complete gift of the stock by the husband to the wife, then the court on an application under section 101 of the Companies Ordinance is entitled to order that the wife's name be entered in the register of members in place of that of her husband.

The law on this point is, in my view, correctly set out in the following passage in 18 *Halsbury's Laws* 3rd edition at page 396 paragraph 755:—

"If a gift is to be valid the donor must have done everything, which, according to the nature of the property comprised in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do."

For the purposes of this appeal, I will assume that on the evidence it has been established that the husband intended to make a gift of the stock in question at the time he delivered the certificate and the transfer form to the wife. The question is whether he has done everything he could, and which was necessary for him to have done, to divest himself of his legal and equitable interest in the stock in favour of the wife.

As the wife is claiming title to the stock she must bring her case within the principle enunciated in the following passage from the judgment of Warrington L.J. in *Re Williams* ⁽¹⁾ at page 8:—

"Claiming as she does as a volunteer and alleging that the assignor made this gift to her, she can only succeed if she can show that the assignor did everything which according to the nature of the property comprised in the assignment was necessary to be done in order to transfer the property and render the assignment binding upon him."

I have, for the reasons which I have already indicated, stated my view that the transfer form was not in conformity with article 50 in that

A the husband had not signed the transfer in the presence of an attesting witness. In these circumstances it is, in my opinion, impossible to say that the husband had done everything that was required to be done by him in order to transfer effectually the title in the stock from himself to the wife. It was necessary for him to sign the transfer form in the presence of a competent witness and this he had not done.

B In my judgment, assuming that the husband had the intention of making a gift of the stock to the wife, there was an incomplete gift and the learned judge erred in deciding that the husband had clearly done all that he could possibly have done, short of actual registration, to divest himself of the ownership of the stock and to vest it in the wife and in ordering rectification of the register of members.

I would accordingly allow the appeal.

Wee Chong Jin C.J. and Chua J. concurred.

Appeal allowed.

Solicitors: Rodyk & Davidson; A. S. K. Wee; Allen & Gledhill.

E RAMANATH & ORS. v. BAN TSAN CHUAN

[F.C. (Pike C.J. (Borneo), Gill & Chang Min Tat JJ.) September 15, 1967]

[Jesselton — Federal Court Application No. X. 4 of 1967]

F *Practice & Procedure — Appeal — Enlargement of time for — Interlocutory order — Federal Court (Civil Appeals) (Transitional) Rules, 1963, r. 13 — Courts of Judicature Act, 1964, s. 68 — R.S.C., 1957, O. 54 r. 22A.*

Practice and Procedure — Four-day rule — Intention of — Court's discretion.

G In an application under rule 13 of the Federal Court (Civil Appeals) (Transitional) Rules, 1963, for enlargement of time within which to appeal against an interlocutory order made by a High Court striking out the defence in an action, the applicant must first show that the facts and circumstances of his case merit the grant by the Federal Court of special leave. If he satisfied the court on this point the court would before acceding to his application require to be satisfied that his proposed appeal against the striking out order had merits. But merely to show that such proposed appeal has merits without also showing there are special grounds for the court to exercise its discretion to grant him special leave to appeal out of time would not be enough.

The fact that counsel is not resident within the jurisdiction of the High Court is no ground by itself for extending the time for doing any particular act which the rules require should normally be done within a specified time.

I The four-day rule intends that an application for further argument should be made promptly. In this case there had not been shown to exist on the facts and circumstances any reason to justify the exercise by the court of its discretion to give special leave.

FEDERAL COURT.

K. E. Hilborne (V. Kumar with him) for the applicants.

Chong Thin Vun for the respondent.

Cur. Adv. Vult.

Pike C.J. (Borneo): This is an application under rule 13 of the Federal Court (Civil Appeals) (Transitional) Rules, 1963, for enlargement of time within which to appeal against an interlocutory order made by the High Court striking out the defence in this action.

The applicants' counsel concedes that the matter is interlocutory and is governed by section 68 of the Courts of Judicature Act, 1964, and Order 54, rule 22A. He further concedes that the English authorities as to extension of time which are applicable are those decided before 1909 when the equivalent English rule was amended. The local rule 13 follows the pre-1909 English Rule in requiring that the special leave of the court be obtained.

The High Court made the order striking out the defence on the 22nd May, 1967.

Under the section of the Act and the Order and rule above referred to a dissatisfied party can do one of the two things, namely —

- (a) he can, within 4 days of the making of the order, apply to the court for the matter to be adjourned into open court for further argument, when the judge will either accede to the request or will give a certificate that he does not require any further argument; or
- (b) he can apply for leave to appeal either to the Federal Court or a judge of the High Court — and following the normal practice he would have to apply first to a judge of the High Court.

The applicants did not within four days apply for adjournment of the summons into open court but subsequently applied by summons in chambers for extension of the four-day period to enable them to apply for the matter to be adjourned into open court.

The court, having heard very full submissions by counsel, both of whom had full authority from their clients to represent them, dismissed the application for extension of time. From this decision the applicants did not appeal but instead, being well out of time for appealing against the ruling, have come to this court to ask for extension of time within which to appeal against the order striking out their defence.

The applicants' counsel has, at some length, sought to show that on the merits of the defence the learned judge was in error in striking it out. But even if he succeeds in satisfying us on this (and I am satisfied that he has) does it follow that this court must grant his application? In my view it does not. The applicant must first

A show that the facts and circumstances of his case merit the grant by this court of special leave. No doubt, if he satisfied us on this point we would before acceding to his application require to be satisfied that his proposed appeal against the striking out order had merits. But merely to show that such proposed appeal has merits without also showing that there are special grounds for the court to exercise its discretion to grant him special leave to appeal out of time would not, in my opinion, be enough.

What special reasons has the appellant advanced for the exercise by the court of its discretion? He has complained that the period of four days is too short. But that has been the period for a great many years and he was aware of it before the application to strike out was heard and he could and, in my view, should have been prepared to take whatever action was needed in case the decision went against him. The defendants were in Jesselton and their instructions could have been obtained by the instructing solicitor who could himself have applied to the court for adjournment into open court for further argument or for leave to appeal.

E The fact that counsel is not resident within the jurisdiction of the High Court is no ground by itself, in my opinion, for extending the time for doing any particular act which the rules, for good reason, require should normally be done within a specified time.

F If the only procedure for appealing against an interlocutory order was by means of the four-day rule there might be some justification for viewing more leniently applications for extension of time. But the Act provides a perfectly good alternative procedure for anyone who has let slip the four days within which he can apply for adjournment into court. It is clear that the rule intends that such applications shall be made promptly and I am not satisfied that there has been shown to exist on the facts or circumstances of this case any reason to justify the exercise by the court of its discretion to give special leave. I have also had regard to the fact that the order which the applicants seek to appeal does not preclude them from getting the issues before the court as the order in express terms gives the applicants 14 days from the determination by this court of this application within which to file a new defence.

I I would therefore dismiss the application with costs.

Gill and Chang Min Tat JJ. concurred.

Application dismissed.